IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

SHANNON V. OMAHA PUB. POWER DIST.

KELLY SHANNON, APPELLEE,
V.
OMAHA PUBLIC POWER DISTRICT, APPELLANT.

Filed March 1, 2011. No. A-10-535.

Appeal from the Workers' Compensation Court. Reversed and remanded with direction.

James L. Quinlan, of Fraser Stryker, P.C., L.L.O., for appellant.

Scot Bonnesen, P.C., for appellee.

INBODY, Chief Judge, and SIEVERS and CASSEL, Judges.

SIEVERS, Judge.

Kelly Shannon, a 35-year employee of Omaha Public Power District (OPPD), was working as a work crew leader on July 14, 2006, repairing storm damage. It is undisputed that on that date, Shannon was injured on the job when a ladder slipped and he fell. This workers' compensation litigation addresses the sole issue of whether Shannon has sustained permanent disability from such accident and, if so, the extent thereof. The primary complicating fact is that Shannon testified at the single-judge hearing of right-sided low-back pain extending into his right leg, which he claims is a consequence of his fall, but the great majority of the medical evidence refers to left-sided low-back pain extending into his left leg. The single judge found that Shannon had "suffered injuries to his low back" and awarded him a 58-percent permanent partial disability, which award was affirmed by the three-judge review panel. OPPD now appeals.

ASSIGNMENTS OF ERROR

Although OPPD assigns seven errors, the first six can be effectively combined into two, and we restate them as follows: (1) The trial court erred in finding that the July 14, 2006, work accident caused any permanent injury and loss of earning power, and (2) the trial court erred in

finding that Shannon met his burden of proof to show that the 58-percent loss of earning power that the vocational expert, Ron Schmidt, said he suffered was caused by the July 14 accident and that such opinion was entitled to the presumption of correctness. OPPD also claims that Shannon did not prove entitlement to future medical benefits, but such assignment is not argued and we do not consider it. See *State ex rel. Lemon v. Gale*, 272 Neb. 295, 721 N.W.2d 347 (2006) (alleged error must be both specifically assigned and specifically argued in brief of party asserting error).

STANDARD OF REVIEW

An appellate court may modify, reverse, or set aside a Workers' Compensation Court decision only when (1) the compensation court acted without or in excess of its powers; (2) the judgment, order, or award was procured by fraud; (3) there is not sufficient competent evidence in the record to warrant the making of the order, judgment, or award; or (4) the findings of fact by the compensation court do not support the order or award. *Cruz-Morales v. Swift Beef Co.*, 275 Neb. 407, 746 N.W.2d 698 (2008). On appellate review, the findings of fact made by the trial judge of the compensation court have the effect of a jury verdict and will not be disturbed unless clearly wrong. *Ortiz v. Cement Products*, 270 Neb. 787, 708 N.W.2d 610 (2005). When the record in a workers' compensation case presents conflicting medical testimony, an appellate court will not substitute its judgment for that of the compensation court. *Worline v. ABB/Alstom Power Int. CE Servs.*, 272 Neb. 797, 725 N.W.2d 148 (2006). The trial judge is entitled to accept the opinion of one expert over another. *Id.*

FACTUAL BACKGROUND

We believe that it is helpful in this case to set forth the standards of review before trying to distill the record down to a cogent factual narrative. Shannon began working for OPPD when he was 20 years old, and at the time of the trial on March 25, 2009, he had taken his retirement pension because he had then satisfied the "rule of 90," meaning that the combination of his age and years of employment equaled 90. Shannon testified that his pension is a "regular pension," not a disability pension. His testimony, in brief, was that he could no longer put up with the physical demands of the work even though he was supposed to be on "light duty" and that, thus, he "took [his] retirement."

For efficiency in our recitation of the pertinent factual background, we point out that while there was conflicting evidence as to whether Shannon was permanently and totally disabled as an "odd lot" worker, or whether he was 58-percent permanently partially disabled as the trial judge found, Shannon does not cross-appeal the award of a 58-percent permanent partial disability or any other aspect of the award.

The trial evidence from Shannon's own testimony was that he had pain on the right side of his lower back and down the right leg. However, after reviewing the numerous medical records and reports in evidence, it is clear that Shannon's testimony was in stark contrast to the medical evidence which, summarized, was that whenever a specific location of pain was reported in the records, it was reported as left lower back, and with respect to his leg, whenever such was specifically mentioned it was always the left leg. Because of this curious inconsistency between the medical records and Shannon's deposition and trial testimony, OPPD contends that Shannon has failed to carry his burden of proof that his July 14, 2006, accident caused the injury that he

complained of at trial. OPPD also argues that Shannon's proof of loss of earning power is likewise flawed due to this discrepancy, in addition to the problems inherent in the fact that the expert opinion on loss of earning capacity was based on a functional capacity evaluation (FCE) done at a time when Shannon was disabled from work because of other, nonwork-related conditions. Therefore, we focus first on Shannon's trial testimony and then on what the medical records reveal about the locus of his injury and the residual consequences thereof.

In his direct examination at trial, when asked what part of his body was hurt, Shannon testified, "My back was hurt. . . . My lower back . . . at [my] beltline." Shannon testified that he still has pain in his "low back" every day and that on a scale of 0 being no pain and 10 being the most severe, he averages a 3 or 4. Shannon's cross-examination testimony was as follows:

> Q. Now, when you were describing the pain in your back to [your attorney] I noticed you -- while you were testifying you put your right hand on your back?
>
> A. Right.
>
> Q. So am I right that your testimony is that the pain that you're feeling today is in the right side of your low back?
>
> A. Yes, by the belt, around my beltline.
>
> Q. And on the right side?
>
> A. Correct.
>
> Q. And when you slipped from the ladder on July 14th of 2006 and felt pain in your back, was that pain on the right side of your back as well at that time?
>
> A. Yes, it was.
>
> Q. And since the date of the accident then, the 14th through today, you have had varying degrees of back pain located on the right side of your back?
>
> A. Yes, sir. Now, if I do too much, you know, it goes kind of across the back a little bit, but it's mostly in that lower back area on the right side.
>
> Q. On the right side?
>
> A. Yeah.
>
> Q. Now, in October of 2008, shortly before you retired, you had surgery on your right hip?
>
> A. Yes, sir.
>
> Q. And the condition that was being treated in your right hip is not related to this accident in any way; isn't that true?
>
> A. Not that I know of, no.

Shannon's deposition, taken approximately 6 weeks before the trial, was offered and received in evidence. In that deposition, Shannon testified that the Monday following the incident, he went to see Dr. D.M. Gammel, and that during that weekend, "[i]t just ached and throbbed." He then testified:

> Q. All right. Now, when you say it, you and I are sitting across the table, you're showing me with your right hand kind of [sic] your back?
>
> A. The lower back.
>
> Q. On which side of your body? On your right side or left side?
>
> A. Right, on my right.

Q. Okay. . . . So you had some aching kind of along the belt line on the right side of your back?

A. Right.

Shannon testified that his back symptoms were pretty much the same from July 2006 to the time of the deposition in January 2009. Shannon's deposition contains the following questions and answers from OPPD's counsel:

Q. And do you think that -- And where is that pain and aching now?

A. Where is it now?

Q. On the right side or the left side?

A. It's on my right side.

Q. Now, I want to just make sure that you and I are communicating.

A. Okay.

Q. I've got some notes that Dr. Gammel made in July of 2006 where he says that you complained of left-sided low back pain with numbness. So he's talking -- his notes apparently say left side.

A. No, it should be right side.

Q. And that's not what you're telling me today? Okay? His record says "History of present illness: This 53-year-old male was climbing a ladder on the 14th, slipped with his right leg going through the rung, left leg is slamming down on the ground. He developed left-sided low back pain with numbness and tingling in his left leg."

A. No, it was my right side. He's got that backwards. I believe he does.

Q. But I want to come back and talk about left side and right side in a minute. What we were talking about really was whether the symptoms or the pain level had substantially changed --

A. No.

Q. -- since July of '06 through today[?]

A. No.

Q. And your answer is no, there hasn't been a substantial change?

A. Not really, no.

Dr. Gammel was the first physician seen by Shannon after July 14, 2006, and he examined Shannon more than any other medical provider who shows up in the record. Dr. Gammel examined Shannon on nine occasions after the July 14 work incident. We detail the following pertinent recitations from those visits which are largely direct quotes:

• July 17, 2006: Shannon "developed left-sided low back pain with numbness and tingling in his left leg down to the knee level more on the anterior aspect of the leg. . . . DIAGNOSIS: Left lumbar radiculopathy."

• July 24, 2006: "Examination of the lumbar spine reveals mild tenderness in the left lumbar region with normal range of motion. . . . No trigger points or spasm. . . . [N]o real radicular complaints. . . . DIAGNOSIS: Left lumbar radiculopathy."

• August 16, 2006: Shannon has "persistent discomfort into his left lower extremity," and his "[l]umbar spine reveals no deformity. There is [a] full range of motion. . . . DIAGNOSIS: Left lumbar radiculopathy, improved."

• August 30, 2006: Shannon "continues to have an aching sensation in the left lumbar and posterior thigh area with numbness in the left leg. . . . DIAGNOSIS: Left lumbar radiculopathy."

• September 13, 2006: Shannon "was considerably improved [and] does have one localized area over the SI joint on the left that is palpably tender . . . no particular pain in his lower extremities. . . . DIAGNOSIS: Left lumbar radiculopathy with SI joint inflammation."

• September 18, 2006: "On his last visit, the SI joint was injected . . . and at this time, has very minimal complaint . . . . He has no radiating pain. . . . DIAGNOSIS: Left lumbar radiculopathy."

• March 26, 2007: Shannon "now has some numbness and tingling sensation in his anterior thigh and down into his foot. . . . DIAGNOSIS: Left lumbar radiculopathy."

• April 2, 2007: Shannon "underwent [injection] six days ago and states that he has improved, but still has numbness in the anterior aspect of his left thigh and some discomfort in his posterior thigh down to the level of the knee. . . . DIAGNOSIS: Left lumbar radiculopathy, improved."

• April 13, 2007: Shannon had injection on April 9, "which has not given him total relief. He does have some intermittent discomfort radiating into his anterior thigh to the level of his knee. . . . DIAGNOSIS: Lumbar radiculopathy."

However, in our record, there is no opinion from Dr. Gammel with respect to causation of Shannon's complaints that Shannon described in his trial testimony, nor does he provide any assessment of any permanent impairment caused by the work incident of July 14, 2006. In fact, of the physicians seen by Shannon, only Dr. Douglas Long, who saw Shannon only once, rendered an opinion on causation and permanent impairment. And these opinions were not rendered via testimony or a narrative report, but, rather, in exhibit 5, a "check yes or no" questionnaire that contains the preliminary statement that the opinions that he checked affirmatively were "based upon [his] treatment, including the history and physical given by [Shannon], and all examinations and tests which are referenced in [his] office chart." Dr. Long saw Shannon on one occasion, June 4, 2007, and his office record reflects that he was seen "with a chief complaint of low back and left lower extremity pain." The office record recites, Shannon "describes the onset of his symptoms to have occurred on 06/06/07 after he fell off a ladder at work." We note that the work-related injury relevant to this case actually occurred on July 14, 2006. In this office record, Dr. Long reviewed a current MRI scan and noted "[d]egenerative disc disease [present] at L4-L5 and L5-S1" and that a prior scan of April 19, 2007, showed the same with a "small right far lateral disc herniation at L4-L5." Under the "Recommendations" section, Dr. Long stated, "We explained to . . . Shannon that his low-back pain could be secondary to inflammation of the SI joints or the degenerative disc disease documented on his MRI scans." The plan was said to be "to obtain an EMG study of the left lower extremity." That was accomplished by Dr. John Goldner on June 27, and his report states, "This study is done for symptoms of left thigh pain and numbness." The result was a "[n]ormal EMG and nerve conduction study of left lower extremity."

The workers' compensation court trial judge found that Shannon had sustained "injuries to his low back" as a result of the incident with the ladder on July 14, 2006, and that the "medical causation opinion is at Exhibit 5," which is the "yes-no" questionnaire filled out by Dr. Long that we alluded to above. The trial judge makes no mention of, or findings concerning, the "left-right

side" dichotomy between Shannon's testimony and the medical records, nor does he make any reference to or findings concerning the consistent complaints of problems with Shannon's leg--irrespective of whether it is the left or right leg.

In addition to Drs. Gammel's, Long's, and Goldner's focus on the left leg symptomology, another doctor, Dr. James Devney, saw Shannon in consultation on July 31, 2007, and that doctor's "History" includes the following: "The pain is described as a dull, nagging, aching low back pain. The pain in the left anterolateral thigh is a numb, burning type pain." Dr. Devney's "Impression" included "[l]ow back pain," "[l]umbar disc degeneration," "[l]umbar disc displacement," "[m]ild lumbar spinal stenosis," and "[l]eft anterolateral thigh pain and paresthesias." Dr. Devney recommended an FCE in 2 weeks. Dr. Devney also provided answers to a "yes-no" questionnaire, but did it on his own stationery with narrative answers. To the question "**Do you feel . . . Shannon will have any permanent restrictions associated with his work-related injury?**" he responded:

> No. Relevant lumbar pathology per MR imaging demonstrates age-appropriate wear and tear degeneration. Although he does possess a small left-central disk protrusion at L5-S1, this does not correlate with his complaints of left anterolateral thigh pain. Instead, it is most likely that . . . Shannon suffers from a condition known as "meralgia paresthetica." This usually results from mechanical entrapment of the lateral femoral cutaneous nerve as it exits the pelvis anteriorly. Not uncommonly, this entrapment occurs in obese individuals as related to increased abdominal girth. Of course, this is unrelated to his work-related injury allegations of July 14, 2006.

In this connection, the various medical records reveal that Shannon is 5′10″ tall with a weight reported at various times between 225 and 240 pounds. Given such height and weight, the inference from Dr. Devney's mention of "obese individuals" and "increased abdominal girth" is that such is the cause of Shannon's symptoms. In this document, Dr. Devney also answered the question as to whether Shannon "**has an impairment rating associated with his work-related injury?**" with a simple "No."

The trial record shows that Shannon's objective MRI findings during his post-July 14, 2006, treatment actually predate the July 14 incident. The evidence includes several medical records from Dr. Charles Burt and Nebraska Orthopaedic Hospital as a result of visits in April and December 2005. On April 20, 2005, he reported numbness over the front part of his left thigh "for the last two years without any specific injury or trauma." Shannon told Dr. Burt that he had "x-rays of his low back in December of 2003, which were normal." The physical examination of April 20 reveals that the "low back does not have any tenderness," nor did Shannon report any complaints of low-back pain to Dr. Burt at the time of that visit. The doctor's "Assessment" was "left knee degenerative joint disease" and "[l]eft leg numbness." Despite the absence of low-back complaints in those records, exhibit 8--a note from Dr. Burt dated April 20, 2005--states that Shannon "is being treated for back & leg pain[,] will be off work until 6/1/05." Moreover, an MRI of the lumbar spine was done on April 21 at Nebraska Orthopaedic Hospital, which revealed "[s]mall broad based left sided protrusion of the L5-S1 disc," "[s]light retrolisthesis of L5 on S1," and "[m]ultilevel degenerative disc disease." No causation opinion or impairment rating from Dr. Burt concerning the incident of July 14, 2006, is in the record.

Ronald Schmidt was the court-appointed vocational counselor who opined that Shannon has suffered a 58-percent permanent loss of earning power. The trial judge found that such opinion was entitled to the "presumption of correctness" and awarded Shannon disability benefits in accordance with such opinion. Schmidt's opinion relied upon an FCE performed on February 28, 2008. However, the evidence shows that at the time of this FCE, Shannon's status was that he was being treated for bilateral knee pain and a left shoulder rotator cuff injury, and in fact, he was off work from OPPD due to such conditions from February 14 until April 14--during which time the FCE was performed on February 28. The FCE does not explicitly address limitations attributable to his nonwork-related knee and shoulder symptoms causing him to be off work at the time of the evaluation nor does the FCE distinguish limitations from such as opposed to his lumbar and leg pain and numbness--the sequela that he alleges he has from the July 14, 2006, work incident.

REVIEW PANEL DECISION

The three-judge review panel affirmed the trial judge's award. The panel discussed the "right-left" anomaly in Shannon's testimony, but focused on the fact that the award specifically found that Shannon had "suffered injuries to his low back" as a result of the July 16, 2006, injury, and the review panel observed that in his deposition, Shannon stated that he was not claiming that he suffered injury to his left leg in the accident. The panel said that the trial judge considered all of the evidence, and observed the plaintiff's testimony, and "[t]he medical record in evidence provides a sufficient basis for the finding that [Shannon's] low-back injury was causally related to the accident of July 14, 2006." The panel also upheld the trial judge's finding that the presumption of correctness that attached to the loss of earning capacity analysis by the court-appointed expert, Schmidt, was not rebutted.

ANALYSIS

We have taken considerable care to review the medical evidence and to set forth the pertinent portion thereof in our opinion. We have previously set forth our limited standard of review, and that standard means that we do not act as a trier of fact. In testing the sufficiency of the evidence to support the findings of fact made by the Workers' Compensation Court, the evidence must be considered in the light most favorable to the successful party, and the factual findings by the compensation court have the same force and effect as a jury verdict in a civil case. *Murphy v. City of Grand Island*, 274 Neb. 670, 742 N.W.2d 506 (2007). When the record in a workers' compensation case presents conflicting medical testimony, an appellate court will not substitute its judgment for that of the compensation court. *Lowe v. Drivers Mgmt., Inc.*, 274 Neb. 732, 743 N.W.2d 82 (2007). However, it is clear that the value of an opinion of an expert is no stronger than the facts upon which it is based. *Riha v. St. Mary's Church & School, Inc.*, 209 Neb. 539, 308 N.W.2d 734 (1981); *Anderson v. Cowger*, 158 Neb. 772, 65 N.W.2d 51 (1954).

The record, when viewed in its entirety, creates an unusual situation in that Shannon clearly described his symptoms at trial and particularly in his deposition taken 6 weeks before trial as right-sided low back and right leg numbness and pain. Yet, there is not one medical document of any kind which matches up with Shannon's trial and deposition description of his symptomology. Although Shannon said in his testimony that Dr. Gammel "got that backwards,"

such explanation cannot be accepted for a number of reasons. First, Dr. Gammel produced a separate record for each of the nine occasions he saw Shannon and these separate records from each visit were consistent in reporting symptoms of pain and numbness in the left leg, not the right, and the diagnosis was consistently "[l]eft lumbar radiculopathy." It defies belief that Dr. Gammel would have "got that backwards" each time he saw Shannon, because it is clear that the record Gammel produced from each visit was a separate note prepared with considerable attention to detail. To conclude, as Shannon explains, that Dr. Gammel got it "backwards" means that Drs. Long and Devney also got it "backwards." It defies belief that all three doctors made this kind of mistake given that they each were seeing Shannon separately and individually preparing their own records. And it is particularly significant that the one and only objective diagnostic test done on Shannon's leg was the EMG by Dr. Goldner--done on the left leg. And the MRI's of the lumbar spine, dating back to April 2005, more than a year before the ladder incident, all reveal that the findings were largely on the left and were degenerative disk conditions that predated the ladder incident of July 14, 2006.

Moreover, the review panel's dismissive treatment of what we shall call the "right-left leg issue" on the basis that Shannon was not making a claim for the leg is simply incorrect. In Shannon's testimony, he clearly was making a claim that he had right leg symptoms that came from his July 14, 2006, incident that had not changed since that time. Shannon makes this claim in his testimony despite the fact that he had never reported right leg difficulties to any of the doctors he had seen since the July 14 incident, with one exception, which perhaps provides an explanation for his testimony of right leg symptoms. The exception is found in exhibit 40, a letter of October 27, 2008, by physical therapist Somer Sutton to Dr. Burt which begins with "Diagnosis: Status Post right hip scope for labral repair." The letter then continues:

> This patient is a 55-year-old male who reports he underwent a right hip scope for a labral repair. The patient noted the onset of right hip pain and decreased range of motion beginning in May of 2008. The patient can recall no specific injury or exacerbating factor. The patient states that his pain progressively worsened and he had significant increased discomfort and immobility with hip flexion and external rotation. . . . The patient states [that] prior to onset, he was independent with ADLs and leisure activities with no history of right hip pain.

This one occasion of reported right-sided leg and hip problems is not causally related to the ladder incident--at least there is not one shred of evidence that it is.

We now turn to the matter of the FCE, performed on February 28, 2008, upon which the loss of earning capacity award is based. We cannot ignore the fact that at the time it was performed, Shannon was unable to work because of nonwork-related conditions. There is another letter to Dr. Burt from Sutton dated April 1, 2008, beginning with "Diagnosis: Left shoulder impingement/partial bursal supraspinatus tear." The letter continues:

> The patient is a 55-year-old male who reports an insidious onset of left shoulder pain beginning in January of 2008. The patient denies any history of previous injury or similar symptoms. . . . *The patient states* [*that*] *prior to onset, he was independent with ADL's and working pain free.*

(Emphasis supplied.)

Thus, given Shannon's physical conditions and limitations (unrelated to his July 14, 2006, incident), from which he was suffering at the time of the FCE relied upon by the court-appointed expert, we cannot find that such is a valid or reliable assessment of Shannon's limitations, if any, arising out of the July 14, 2006, incident--and it is this FCE that forms the basis for the opinion by Schmidt, the court-appointed vocational counselor, that Shannon has sustained a 58-percent permanent partial disability. As a result, we find that the presumption of correctness accorded to Schmidt's assessment of Shannon's disability has been rebutted. We add that the fact that Dr. Long "agrees" with the FCE under discussion as stated in his "yes-no" response to Shannon's counsel's letter of March 11, 2008, does nothing to prove that Shannon has permanent partial disability caused by the July 14, 2006, incident. The Nebraska Supreme Court has explained in *Giboo v. Certified Transmission Rebuilders*, 275 Neb 369, 386, 746 N.W.2d 362, 375 (2008):

> As noted above, Nebraska law provides that trained vocational experts will help workers' compensation courts handle compensation claims by disabled employees. While the opinion of the court-appointed expert is given a rebuttable presumption of validity, a party who disagrees with the expert's conclusions may overcome this presumption by showing that those conclusions are inaccurate. Again, one way of showing the inaccuracy of a court-appointed expert's opinion is to demonstrate that the opinion is based on assumptions which run contrary to law. A party can also show that the opinion of the court-appointed expert is inaccurate by offering proof that the nonexistence of a fact presumed by the court-appointed expert is more probable than is its existence.

In the final analysis, we think that the trial judge found injury to the "low back" from the July 14, 2006, work incident while ignoring the fact that Shannon's testimony clearly implicated the right side of his low back and radiculopathy into the right leg which was in stark contrast to the overwhelming evidence that it was left-sided low-back pain and left leg symptoms that Shannon consistently described, as found in numerous medical records from a variety of medical providers. This occurs with such frequency over such an extended period of time that to accept that Dr. Gammel got it "backwards" as Shannon contends defies logic and is simply not believable. There can really be no question that Shannon consistently described left leg radiculopathy which originates from difficulties with the nerves existing on the left side of the lumbar spinal cord--hence the consistent diagnosis by Dr. Gammel of "Left Lumbar Radiculopathy," a condition which by definition affects the left lumbar area and left leg--not the right lumbar area and right leg.

CONCLUSION

After dedicated and thorough examination of the record, the left-right dichotomy might be inexplicable, but "it is what it is" and that is this: at the time of trial, Shannon was complaining of right-sided lumbar and leg symptoms which importantly he said had been present since the accident without change, but that testimony is completely inconsistent with 32 months' worth of medical records leading up to trial. Thus, this case is not about a disagreement between doctors, an area where we generally do not tread, but, rather, the question is whether a finding on this record that Shannon sustained generic "low back injury" is clearly erroneous when he is testifying to a very specific set of symptoms at trial that are unmentioned in the medical records

and, in fact, are the exact opposite of what is found in those records. This is of course a factual determination that we are generally loathe to disturb, but this is the rare case where the trial judge's factual findings are clearly wrong because they are not supported by the whole of the record and in fact are inconsistent with the persuasive force of considerable opposing evidence. Were we to sustain the trial court's award, we would be rubber stamping a decision that ignored a monumental discrepancy between the testimony of the worker, Shannon, and the medical records by simply awarding him benefits for a generic "low back injury."

Because we find that the proof is insufficient that Shannon sustained permanent impairment to his right leg and right lower back--which he clearly testified was the injury he sustained in the July 14, 2006, work incident--the award of permanent partial disability cannot stand and as such is also clearly erroneous. See *Green v. Drivers Mgmt., Inc.*, 263 Neb. 197, 639 N.W.2d 94 (2002) (holding before permanent partial disability benefits can be awarded, claimant must prove that he or she has permanent impairment). Additionally, if the nature and effect of a claimant's injury are not plainly apparent, then the claimant must provide expert medical testimony showing a causal connection between the injury and the claimed disability. *Id.* Shannon's evidence fails to provide that causal connection. Therefore, we reverse the decision of the review panel and direct it to remand the matter to the trial judge with directions to dismiss Shannon's petition.

REVERSED AND REMANDED WITH DIRECTION.